



**NIXON
PEABODY**

NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Anjali Vohra
Associate
avohra@nixonpeabody.com

Nixon Peabody LLP
799 9th Street NW
Suite 500
Washington, DC 20001-4501
202-585-8000

July 20, 2016

VIA EMAIL AND FIRST CLASS MAIL

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondents' Reply to Complainants' Request for 20-Day Extension of Time.

Please contact me if you have any questions.

Best regards,

Anjali Vohra

Enclosures

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV ET AL

Consolidated With

DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV ET AL

RESPONDENTS' REPLY TO COMPLAINANTS'
REQUEST FOR 20-DAY EXTENSION OF TIME

Respondents Empire United Lines and Michael Hitrinov hereby reply to Complainants' motion for a 20-day extension of the date for filing responses to the July 13 Motion to Intervene filed by Mr. Kapustin (the "Kapustin Motion"). As detailed below, Complainants (i) misrepresent Respondents' position and (ii) fail to proffer any cogent reason why they need an extension of three times the normal response period on top of the shorter extension already provided by the Presiding Officer. Respondents nevertheless do not object to a reasonable extension until August 3. The Presiding Officer should stay all other matters pending resolution of Counsel's status, or in the alternative should apply the extension to all current obligations.

I. Complainants' Misrepresentation

Contrary to Complainants' assertions in the motion, Respondents have neither refused consent to an extension nor demanded any sort of quid pro quo. The actual facts are as follows:

- On July 18, late morning, Complainants sent an email advising of their intent to seek an extension of time until August 15 to respond to the Motion to Intervene. No reasons for the extension were offered, but only a request to consent or decline within two and a half hours.
- The undersigned, then in an all-day meeting with DOJ, did not see the email until lunch break, and, in light of the unusual length of the request, promptly responded as follows: "May I ask the reason for the extension?" Complainants did not respond.
- That evening, in the absence of any response as to reasons for the extension. The undersigned "propose[d] a package deal" for a joint motion to extend the time for responding to the proposed intervention and a stay of proceedings until the Presiding Officer resolved the central issue of who properly represents Complainants.
- No response to the proposal was received until the time that the instant motion was filed.

As the foregoing illuminates, Respondents did not refuse consent, but rather asked for Complainants' reasons, given the magnitude of the extension and the Presiding Officer's prior explanation that litigants do not control the docket at the FMC. Nor is there anything in the undersigned's second email suggesting any sort of ultimatum, or saying Respondents would not consider a counterproposal. The stay was proposed not as any pre-requisite to consent, but rather as appropriate on its own merits, as shown below.

II. Complainants' Proffer No Basis for a 20-day Extension

Complainants provide no basis for an extension of 20 days. The only reason offered is that Counsel was necessarily out of the country on July 13, the date Mr. Kapustin's motion was

filed/served.¹ We accept that at face value, but do not see how that justifies an extension beyond the one suggested herein. The instant motion states that it was signed in Brooklyn (which only seems overseas) on July 18 (without, apparently, serving it on the movant). It is difficult to comprehend how a 5-day delay justifies a 20-day extension.²

The instant motion also raises the question of why Complainants cannot respond to the Kapustin Motion for 20 days, but can respond much sooner to the obligation to supplement the record and respond to Respondents' supplement.

III. Respondents Propose a Reasonable Extension for All Pleadings

Even without reasons, Respondents would normally consent as a matter of courtesy to a request for a modest extension. In the absence of a stay of all matters other than the issue of Counsel's status (discussed below), Respondents propose that the time for all pleadings currently due on July 26 be extended until August 3, 2016 (with a corresponding extension of the date for responding to supplementation of the record). This is based not only on Complainants' motion, but also on the undersigned's schedule and practical considerations.

The undersigned has been even busier than expected since his return to the office, almost entirely on other matters with due dates before those in this proceeding. For example, just this past weekend the undersigned worked approximately seven hours on Saturday and twelve hours

¹ Complainants also note that this is their first request for an extension. The FMC's rules, however, do not provide for one free extension, but rather require "a showing of good cause" for each request. Respondents' first request, for example, was partly denied in favor of a shorter extension.

² The reference to Counsel's email out-of-office message is even more puzzling. No such message is currently being received in response to emails the undersigned has sent to Counsel, and it appears from the face of his filing that he is back in Brooklyn. The undersigned also notes that the content of Mr. Nussbaum's out-of-office message seems to change like the wind, with several different sets of dates having appeared recently, interspersed with the normal absence of a message.

on Sunday on matters other than this one (and about twelve hours each of the past two days). As a result, we are rather behind in our obligations to Empire, especially as to the supplementation of the record.

The Presiding Officer has also manifested an apparent preference to maintain uniform due dates for the outstanding pleadings, including the recent extension of the due date for responding to Mr. Kapustin's motion. Respondents are also concerned that an extension solely for response to the Kapustin Motion would create an uneven playing field by giving Complainants an unmatched opportunity to make merit-based arguments in their response using new material from Complainants' Reply and the record supplementation.

IV. The Proceedings Should Be Stayed Pending Resolution of Counsel's Status

Mr. Kapustin states in his motion that he intends to make a motion to disqualify Complainants' current counsel. Such an event would have tremendous consequences for the future of this proceeding. Respondents therefore believe, as proposed to Complainants, that common sense makes it appropriate, if not mandatory, to stay all other proceedings pending a determination of who will represent Complainants going forward. This would be true whether the Presiding Officer grants Complainants the requested extension, a shorter extension, or no extension at all.

It seems almost inconceivable that this matter could properly proceed without knowing who will be representing Complainants. Mr. Kapustin's motion presents a very serious conflict issue—one that Respondents flagged long ago, which in turn raises serious questions regarding how to proceed. For example, what would be the status of pleadings filed by current counsel between today and the time new counsel takes over, should the Presiding Officer disqualify

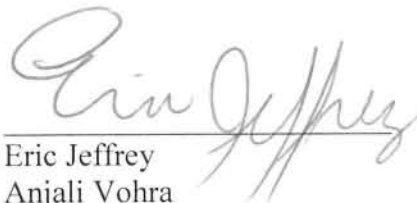
current Counsel? Would those pleadings be binding on Complainants and new counsel despite being made by a counsel with conflicting loyalties? Or would new counsel be entitled to a Mulligan? Neither seems appropriate. We also believe that new counsel would change the entire picture regarding settlement, giving both sides reason to re-evaluate negotiation, with or without the good offices of CADRS.

CONCLUSION

For the foregoing reasons, Respondents believe that the Presiding Officer should grant Complainants a reasonable extension and stay all other pending matters. If the Presiding Officer declines to issue a stay, Respondents respectfully request that he issue a reasonable extension applicable to all outstanding matters.

Date: July 20, 2016

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Eric Jeffrey", written over a horizontal line.

Eric Jeffrey
Anjali Vohra
Nixon Peabody LLP
799 9th Street, N.W., Suite 500
Washington, D.C. 20001
202-585-8000

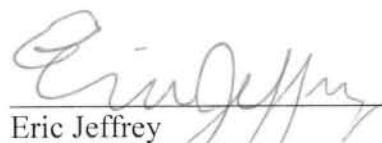
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Respondents' Reply to Complainants' Request for 20-Day Extension of Time by email and first class mail to the following:

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.
P.O. Box 245599
Brooklyn, NY 11224

Date: July 20, 2016


Eric Jeffrey
Counsel for Respondents